

## REMARKS

In response to the February 5, 2007 Office Action, Applicants respond to the Examiner's detailed action with the following remarks. Claim 5 is hereby cancelled without prejudice.

### Claim Rejections – 35 USC §103

Responsive to the Examiner's rejection of Claims 1 – 9 under 35 U.S.C. 103(a) as being unpatentable over U.S. 6,139,646 (Asgharian) in view of U.S. 6,162,393 (De Bruiju), Applicant respectfully disagrees. To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). Claim 5 is cancelled, thereby rendering the Examiner's rejection based upon De Bruiju moot in light of this amendment.

Asgharian teaches compositions containing covalently modified trypsin and various other agents, including "1) an anti-microbial agent, 2) an Al-trypsin, 3) a buffering agent, 4) a tonicity agent, and 5) water," (Column 9, lines 58 – 65). Asgharian teaches that certain organic molecules like propylene glycol can be used to "stabilize" Al-trypsin. Asgharian states that such "stabilizers" compete with water in the hydrogen bonding of the enzyme in solution, and thereby deprive the enzyme of the water-hydrogen bonding necessary for enzyme activity," (Col. 6 – 7, lines 65 – 67 and 1 – 2). Asgharian does not teach an ophthalmic solution that shows improved efficacy absent Al-trypsin, nor does it teach the use of specific amounts of a simple saccharide to increase the anti-microbial effect of PHMB in low salt concentrations.

Amended Independent Claims 1, 8 and 9 include the limitation of a combination "comprising 0.001 to 10 weight percent of a preservative enhancer [one or more simple saccharides]...and at least 0.0001 weight to 10 weight percent polyhexamethylene biguanide." Independent Claim 1 has been amended to disclaim propylene glycol, the organic molecule recited by Asgharian as a stabilizer. Independent Claims 1 and 8 further include the limitation of a low chloride concentration.

The claims are distinctive from Asgharian because the *combination* of 0.001 to 10 weight percent of a simple saccharide, PHMB, and low chloride demonstrates surprisingly improved efficacy (*see* Examples 3A and 3B), while Asgharian teaches only some of these elements used entirely independently from one another. The present claims include the limitation that **the recited simple saccharides at specific concentrations enhance the efficacy of PHMB**. Asgharian does not teach the combination, nor does it teach the claimed concentration. Asgharian is limited to primarily a solution including 25 – 60% wt./vol. propylene glycol and Al-trypsin, as stated by Asgharian in lines 28 through 45 of column 8. Asgharian further states that “the stabilizers [e.g., propylene glycol] will be employed in the aqueous concentrates of the present invention in an amount of **from 10 – 90 % weight/volume (w/v), preferably, in an amount of from 40 – 80% (w/v),**” (Col. 7, lines 15 – 19). One skilled in the art, upon reading the teaching in Asgharian, would therefore not use a stabilizer in concentrations below about 10%. The claims of the present application are directed to an invention that has the advantage of surprisingly increasing the antimicrobial activity of PHMB with much lower concentrations of a simple saccharide. Additionally, Asgharian requires covalently modified trypsin and various other agents in each of its recited Examples. As a result, Asgharian does not teach the combination as claimed.

Applicant respectfully submits that Claims 1, 8 and 9 and all claims that depend therefrom are therefore in condition for allowance.

Applicants appreciate the opportunity to call the Examiner but believe that this amendment to the claims and the forgoing remarks fully address the issues raised by the Examiner. On the other hand, the Examiner is invited to call the undersigned attorney if he has any matters to address that will facilitate allowance of the application.

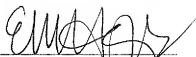
Applicants respectfully request favorable consideration and that a timely Notice of Allowance be issued in this case.

In the event that Applicants have overlooked the need for an extension of time, additional extension of time, payment of fee, or additional payment of fee, Applicants hereby conditionally petition therefore and authorize that any charges be made to Deposit Account No.: 50-3010.

Appl. No. 10/544,151  
Resp. Dated May 1, 2007  
Reply to Office Action of February 5, 2007

Respectfully submitted,

HISCOCK & BARCLAY, LLP

By: 

Eleanor M. Hynes  
Attorney for Applicant  
Reg. No. 58,013  
2000 HSBC Plaza  
100 Chestnut Street  
Rochester, NY 14604  
Tel: (585) 295-4493  
Fax: (585) 295-8452